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DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-888]

Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Countervailing Duty Determination, and Notice of Amended Final Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 8, 2019, the United States Court of International Trade (Court) sustained the final remand results pertaining to the countervailing duty (CVD) investigation on certain carbon and alloy steel cut-to-length (CTL) plate from the Republic of Korea (Korea) covering the period January 1, 2015 through December 31, 2015. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final determination of the CVD investigation and that Commerce is amending the final determination with respect to the net countervailable subsidy rates assigned to POSCO and all other producers/exporters not individually investigated.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3813.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2017, Commerce published its *Final Determination*.¹ In the *Final Determination*, Commerce calculated a net countervailable subsidy rate of 4.31 percent for POSCO.²

On December 6, 2018, the Court remanded various aspects of the *Final Determination* to Commerce.³ In its *Remand Order*, the Court upheld Commerce's application of adverse facts available (AFA) to POSCO's cross-owned company POSCO M-Tech's unreported additional government subsidies, but remanded to the agency for reconsideration its determination that the assistance received by POSCO M-Tech was countervailable.⁴ Specifically, the Court held that Commerce did not sufficiently justify its application of AFA in making its benefit and specificity findings regarding this program.⁵

Separately, the Court held that Commerce did not "evaluate the application of the highest available AFA rates" as required by section 776(d)(2) of the Tariff Act of 1930, as amended (the Act).⁶ Accordingly, it remanded the *Final Determination* to Commerce for reconsideration of "why the highest available rate should apply to POSCO."⁷ Because the Court remanded Commerce's *Final Determination* on these bases, it did not address whether the agency

¹ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum.

² See *Final Determination*, 82 FR at 16342; see also Memorandum, "Countervailing Duty Investigation: Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Determination Calculation Memorandum for POSCO," dated March 29, 2017.

³ See *POSCO v. United States*, 353 F. Supp. 3d 1357 (CIT 2018) (*Remand Order*).

⁴ *Id.* at 1374, 1376.

⁵ *Id.* at 1374.

⁶ *Id.* at 1374 and 1382-83.

⁷ *Id.* at 1374 and 1383.

corroborated the AFA rates at issue.⁸

Shortly thereafter, POSCO filed a motion for reconsideration of the Court’s opinion. In its *Reconsideration Order*,⁹ the Court concluded that “Commerce did not provide any additional explanation of how it determined that there was no identical program before moving to the second step of its AFA methodology – using the rate in another investigation – and, thus, did not make the requisite factual findings to address POSCO’s contention that the {Industrial Technology Innovation Promotion Act} grant was an identical program in the proceeding.”¹⁰ Accordingly, it further remanded the *Final Determination* to Commerce for consideration of this issue.

Pursuant to the *Remand Order* and *Reconsideration Order*, Commerce issued its Final Redetermination, which addressed the Court’s holdings and revised the net countervailable subsidy rate assigned to POSCO to 3.72 percent.¹¹ On November 8, 2019, the Court sustained Commerce’s Final Redetermination and entered final judgment.¹²

Timken Notice

In its decision in *Timken*,¹³ as clarified by *Diamond Sawblades*,¹⁴ the United States Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(e) of the Act, Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination, and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s November 8, 2019, judgment sustaining Commerce’s Final Redetermination

⁸ *Id.* at 1383 n.15.

⁹ See *POSCO v. United States*, 382 F. Supp. 3d 1346 (CIT 2019) (*Reconsideration Order*).

¹⁰ *Id.* at 1349.

¹¹ See Final Results of Redetermination Pursuant to Court Order, Consol. Court No. 17-00137, dated July 1, 2019 (Final Redetermination).

¹² See *POSCO v. United States*, Slip Op. 18-169, Consol. Ct. No. 17-00137 (CIT 2018).

¹³ See *Timken Co. v. United States*, 893 F. 2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F. 3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

constitutes a final decision of that court, which is not in harmony with Commerce's *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Commerce will continue the suspension of liquidation of the subject merchandise at issue pending a final and conclusive court decision.

Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Final Determination* with respect to the net countervailable subsidy rate assigned to POSCO. Additionally, because the rate for all other producers/exporters not individually investigated was based on the net countervailable subsidy rate calculated for POSCO, Commerce is amending the all-others rate.¹⁵ As previously indicated, in accordance with the scope of the underlying investigation, this application of POSCO's subsidy rate to all other producers/exporters applies only to subject CTL plate not within the physical description of cut-to-length carbon quality steel plate in the *1999 Korea CVD Order*.¹⁶ The revised net countervailable subsidy rates for POSCO, and all other producers/exporters not individually investigated for the period January 1, 2015, through December 31, 2015, are as follows:

Producer/Exporter	Subsidy Rate (percent)
POSCO	3.72
All Others	3.72

¹⁵ See *Final Determination*, 82 FR at 16342.

¹⁶ See *id.* n.10 (citing *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 6587 (December 29, 1999), as amended, 65 FR 6587 (February 10, 2000) (*1999 Korea CVD Order*)).

Cash Deposit Requirements

Because POSCO does not have a superseding cash deposit rate, *i.e.*, there have been no final results published in a subsequent administrative review for POSCO, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). Effective November 18, 2019, the cash deposit rate applicable to entries of subject merchandise exported by POSCO is 3.72 percent. Similarly, Commerce will also instruct CBP to collect cash deposits for companies covered by the all-others cash deposit rate according to the table above, effective November 18, 2019.

This notice is issued and published in accordance with sections 516A(c)(1) and (e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

Dated: November 18, 2019.

Jeffrey I. Kessler,
Assistant Secretary

for Enforcement and Compliance.

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